INDEX

CITATIONS

Cases—Continued. Page

In the Supreme Court of the United States

October Term, 1953

No. 34

Howell Chevrolet Company, a Corporation,
petitioner

v.

National Labor Relations Board

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

OPINIONS BELOW

The opinion and concurring opinion in the court below (R. 334–351) are reported at 204 F. 2d 79. The findings of fact, conclusions of law, and order of the Board (R. 12–70) are reported at 95 NLRB 410.

JURISDICTION

The decree of the court below (R. 352–357) was entered on February 26, 1953. The petition for a writ of certiorari, filed on April 8, 1953, was granted on May 18, 1953 (R. 359). The juris-

diction of this Court is invoked under 28 U. S. C. 1254 (1) and Section 10 (e) of the National Labor Relations Act, as amended.

QUESTION PRESENTED

Petitioner is a California automobile dealer operating under an agreement with the Chevrolet Motor Division, General Motors Corporation, which requires that it handle to the latter's satisfaction the sale and servicing of Chevrolet motor vehicles and parts. During 1949, petitioner purchased from the Chevrolet assembly plant in California almost $1,000,000 worth of new vehicles, for which about 43 percent of the production parts had been manufactured and shipped to California from points outside the State. During the same period, petitioner purchased from Chevrolet's California warehouse $129,145 worth of parts and accessories, 45 percent of which had been shipped from outside of California. The question presented is whether petitioner's operations affect commerce within the meaning of the National Labor Relations Act.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Supp. V, 151 *et seq.*), are set forth in Appendix A, *infra*, p. 37.

STATEMENT

Following the usual proceedings under Section 10 of the National Labor Relations Act, as amended, the Board, on July 23, 1951, issued its decision holding that petitioner had violated Section 8 (a) (1), (3), and (5) of the Act and ordered that these unfair labor practices be remedied. No question is presented here as to the propriety of the Board's findings and conclusions regarding the substantive violations of the Act. The sole issue before this Court is whether, as the court below held, petitioner is subject to the Board's jurisdiction. The facts with respect to petitioner's business operations, which alone are pertinent here, may be summarized as follows:

I

The Board's findings of fact

A. Petitioner's purchases and sales

Petitioner is a California corporation engaged at Glendale, California, in selling and servicing new and used motor vehicles, chassis, parts and accessories under a "Direct Dealer Selling Agreement" with the Chevrolet Motor Division, General Motors Corporation, hereinafter referred to as Chevrolet (R. 15–16, 55–56, 75–86).

During 1949, petitioner purchased for resale $960,797.97 worth of new Chevrolet motor vehicles which were shipped to it from Chevrolet's new car and truck assembly plant at Van Nuys, California

(R. 16; 72). Of the production parts comprising these vehicles, some 43 percent had been manufactured and shipped to California from points outside the state (R. 16–17; 94, 96, 99).

During the same year, petitioner purchased from Chevrolet parts and accessories valued at $129,145.01.[1] These were shipped to petitioner from Chevrolet warehouses in Van Nuys, California, to which they had been shipped from all over the United States, 43 percent coming from outside of California (R. 16; 72, 97.)[2]

Petitioner's sales of new cars and trucks for 1949 amounted to $1,246,812.85, and its sales of parts and accessories amounted to $256,850.62. All of these sales were made within California. (R. 16–17; 72.)

B. Petitioner's status as an authorized Chevrolet dealer

The "Direct Dealer Selling Agreement," under which petitioner conducts its business operations, requires petitioner "to properly develop to the satisfaction of [Chevrolet] the sale of Chevrolet motor vehicles and chassis," to devote its full time and attention to the conduct of the business, and to "[m]ake every reasonable effort to satisfy

[1] In addition, during 1949, petitioner purchased from other sources within the State $37,240.25 worth of parts and accessories (R. 16; 72).

[2] During the fiscal year October 1, 1949, through September 30, 1950, petitioner purchased from Chevrolet motor vehicles, service parts and accessories valued at between $1,500,000 and $2,000,000 (R. 16–17; 94, 96–97).

owners of Chevrolet motor vehicles and chassis" within its designated sales territory (R. 76, App. B, *infra*, pp. 45, 48, 52).[3] Accordingly, the agreement governs all of petitioner's "transactions, dealings and relations" with Chevrolet, and further regulates petitioner's relationships with other authorized Chevrolet dealers and the public (R. 76, App. B, *infra*, p. 36 ff.). The agreement is for a period of one year but is terminable prior thereto upon notice in the event that either party fails to comply with any of its terms. In addition, Chevrolet is authorized to terminate the agreement in the event of a change in the ownership of the dealer, disputes among its owners or officers that may adversely affect the business, insolvency or bankruptcy, and conviction of any of the dealer's principal officers or managers of any crime which may adversely affect the business (R. 76, App. B, *infra*, pp. 58–60).

1. *Petitioner's relationship to Chevrolet*

Upon the terms and conditions set forth in the "Direct Dealer Selling Agreement," petitioner is given (1) the privilege of purchasing Chevrolet motor vehicles, chassis, parts and accessories from Chevrolet, at prices established by Chevrolet,

[3] A detailed set of "Terms and Conditions" incorporated in the Selling Agreement is reproduced in large part as Appendix B of this brief, pp. 36–60, *infra*. This material, introduced as General Counsel's Exhibit 5–C, is part of the record before this Court but has been only partially printed (R. 82–88).

277605—53——2

(2) the power to act as an authorized Chevrolet dealer, exercising the "non-exclusive privilege" of selling new Chevrolet motor vehicles, chassis, parts and accessories, and (3) "the privilege of using the word 'Chevrolet' and the Chevrolet trademark" (R. 82).[4]

"In order to permit [Chevrolet] to keep its purchases of raw materials and the production and distribution of Chevrolet motor vehicles and chassis in line with retail sales," petitioner is required to furnish Chevrolet every ten days with a "Ten-Day Report," on forms supplied by Chevrolet, showing its sales of cars, stocks of cars, and unfilled orders on hand at the end of the period (App. B, *infra*, p. 39). Petitioner must also "furnish [Chevrolet] for its general guidance every month," on a date specified by Chevrolet, an estimate of its "requirements of new Chevrolet motor vehicles and chassis for the three (3) calendar months next following, each month's estimate to be shown separately." Orders for Chevrolet motor vehicles and chassis must be submitted on forms supplied by Chevrolet, at mutually satisfactory intervals. Orders may be cancelled by petitioner or by Chevrolet, upon written notice, if Chevrolet fails to ship products scheduled for delivery during the month, except

[4] In connection with the retail sale of Chevrolet products, petitioner, like other authorized dealers, utilizes the credit services and facilities of the General Motors Acceptance Corporation (R. 95, 98).

orders for special motor vehicles and chassis, which may be cancelled only by Chevrolet. (R. 83, App. B, *infra*, pp. 38-39.)

Other aspects of petitioner's business, in addition to purchases, orders, and estimates, are also subject to extensive control by Chevrolet under the terms and conditions of the selling agreement. Petitioner must maintain its place of business, including salesroom, service station, parts and accessories facilities, and used car facilities, at a location and in a manner satisfactory to Chevrolet. The amount and structure of its working capital must be adequate in the opinion of Chevrolet. Petitioner is required to purchase such special tools developed by Chevrolet as Chevrolet shall deem necessary to render proper service to customers; to carry in stock at all times an adequate number and assortment of parts and accessories to render proper service to Chevrolet motor vehicle owners in petitioner's "zone of influence;" to install and maintain an accounting system "in strict accordance with the Accounting Manual prescribed by [Chevrolet]" and to submit complete financial and operating statements by the tenth day of each month; to purchase, erect and maintain at its own expense a standard Chevrolet electric sign, an authorized service sign, and such other signs as are necessary to advertise the business on a mutually satisfactory basis; and to permit Chevrolet to examine petitioner's accounts and records, to inspect and check over its

place of business, service facilities, and stock of parts and accessories at any reasonable time in business hours. (R. 83–84, 85, App. B, *infra*, pp. 45–46, 47, 50, 51, 52–53.)

In connection with any service work performed by petitioner for Chevrolet's account, including work for purchasers of vehicles under Chevrolet's service policy and manufacturer's warranty, the sales agreement requires petitioner to apply the "Chevrolet Flat Rate System of time allotments." Petitioner is required to install any parts furnished by Chevrolet under its warranty on motor vehicles sold by petitioner without expense to the owner of the vehicle. In return, Chevrolet agrees to reimburse petitioner, on the basis of the time allotments prescribed in the Flat Rate System, at one-half of the labor rates agreed to by Chevrolet, for service work recommended and furnished by Chevrolet, and for the cost of replacing defective parts under the warranty, if the replaced parts are returned to Chevrolet and found by it to be defective. (App. B, *infra*, pp. 51–52.)

For the purpose of giving "to Chevrolet dealers the advantage of a comprehensive and coordinated dealer advertising program," Chevrolet maintains and administers an "Advertising Fund." As required by the sales agreement, for each new Chevrolet motor vehicle and chassis it purchases, petitioner contributes $12 to this fund, which is used to defray the cost of advertising in peti-

tioner's territory, "through such local advertising media as, in the judgment of [Chevrolet]," will benefit petitioner. Chevrolet also pays into the Advertising Fund the sum of $3.75 for each new Chevrolet motor vehicle and chassis purchased by petitioner, and this portion of the fund may be used by Chevrolet "for advertising of such type in such media and at such time and place as, in the opinion of [Chevrolet], will most effectively serve the dealer needs or interests as determined by [Chevrolet]." (R. 85-86, 88, App. B, *infra*, pp. 54-56.)

2. *Petitioner's relationship with the public*

Further implementing petitioner's basic obligation to "properly develop to [Chevrolet's] satisfaction the sale of Chevrolet motor vehicles and chassis" within its sales territory, the "Direct Dealer's Selling Agreement" establishes standards governing petitioner's dealings with the public. Thus, the agreement recites that Chevrolet will prepare "Advertised Delivered Prices" on new Chevrolet motor vehicles and chassis, at Flint, Michigan, and that Chevrolet desires that "all retail customers wherever located be able to purchase such vehicles at not more than these prices, plus transportation charges and the retail installed prices of any optional equipment and accessories selected by the retail purchaser." Petitioner is required to advertise its delivered

prices in its town; to inform retail purchasers of such prices; to give them itemized invoices covering the details of their purchases; to remove any optional equipment or accessories which the purchaser does not want, or, if necessary, to order a new vehicle without such optional equipment or accessories; and to refrain from making any statement intended to lead a purchaser to believe that transportation and handling charges are greater than those actually charged to and paid for by him. (App. B, *infra*, pp. 48-50.)

"Recognizing the importance of owner goodwill," petitioner is obligated to furnish "prompt and satisfactory service at reasonable cost to Chevrolet owners." (R. 84, App. B, *infra*, p. 50.) Specifically, it agrees to condition new motor vehicles and chassis before delivery, in accordance with Chevrolet's pre-delivery inspection schedule, to execute and deliver to each new Chevrolet vehicle purchaser an "Owner's Service Policy," on forms furnished by Chevrolet, and to perform promptly all the terms of the service policy; to carry in stock an adequate number and assortment of parts and accessories "to render proper service to owners of Chevrolet motor vehicles and chassis in [petitioner's] zone of influence"; to employ a sufficient number of mechanics to meet adequately "the service requirements of the Chevrolet owners in [petitioner's] zone of influence"; and to refrain from selling, offering

for sale, or using in the repair of Chevrolet motor vehicles and chassis as genuine new Chevrolet repair parts, any parts which are not in fact genuine new Chevrolet repair parts (R. 84, App. B, *infra*, pp. 49–50). In general, petitioner is obligated to make "every reasonable effort to satisfy owners of Chevrolet motor vehicles and chassis in [its sales] territory * * * and to satisfy all persons purchasing Chevrolet motor vehicles and chassis from [petitioner] and in pursuance thereof establish regular contact either by correspondence or personal interview, with such owners or purchasers. All complaints received by [petitioner] which cannot readily be remedied, shall be promptly reported to [Chevrolet] with the name of the owner making same." (R. 84, App. B, *infra*, p. 52.)

3. *Petitioner's relationship to other dealers*

The Direct Dealer's Selling Agreement also governs some of petitioner's relationships with other dealers and associate dealers. Dealers' locations and sales territories are controlled, of course, by Chevrolet, which limits the number of dealers in any territory according to population (R. 79–80, App. B, *infra*, p. 46). No dealer may "participate in local advertising in a community outside his zone of influence" unless he obtains the written consent "of the dealer or dealers in whose zone of influence such community is lo-

cated" (R. 86). Petitioner's business hours, too, are limited by those of other dealers, since petitioner must "maintain the business hours customary in the trade" (R. 83).

In addition, petitioner obligates itself to perform services which benefit other dealers and the overall business of selling Chevrolet products. Under the sales agreement, petitioner must "render proper service to owners of Chevrolet motor vehicles and chassis in [petitioner's] zone of influence" without regard to the fact that such owners may have purchased their vehicles from another dealer. Petitioner engages, along with other authorized Chevrolet dealers, in a "comprehensive and coordinated dealer advertising program," and is required to participate jointly with other dealers in advertising where "two or more Chevrolet dealers are located in the same city or town or where one or more dealers are located in a community suburban to a large city and in the judgment of [Chevrolet] advertising in said large city covers such suburban community, or where two or more dealers are located within a group of communities which, in the judgment of [Chevrolet], may be considered as a common area for purposes of local advertising." (R. 85, 86-87, App. B, *infra*, pp. 50, 55.)

Finally, petitioner, "with approval of and jointly with [Chevrolet]," must "enter into selling agreements with Associate Dealers for the sale of new Chevrolet motor vehicles, chassis, parts

and accessories under the jurisdiction of [petitioner] at such places within [petitioner's] territory as [petitioner] shall deem advisable or as [Chevrolet] may require." If petitioner fails to appoint Associate Dealers at the request of Chevrolet within three months after such a request, Chevrolet has the right to appoint Associate Dealers at the designated places. (App. B, *infra*, pp. 56–57.)

II

The Board's conclusions and order

The Board found that petitioner, operating under the sales agreement, and subject to controls imposed by Chevrolet, is "one of a limited number of dealers selling Chevrolet products, and, by virtue of its contractual relationship with Chevrolet Motor Division—General Motors Corporation, is an integral part of that corporation's national system of distribution" (R. 56–57). It concluded that, in the circumstances, petitioner was subject to the Act and that it would effectuate the policies of the Act to assert jurisdiction in the case (R. 57). The Board further found (R. 56–63) that petitioner had violated Section 8 (a) (1), (3), and (5) by engaging in various acts of restraint and coercion, discharging an employee for his union activities, and refusing to bargain with the employees' bargaining representative.

The Board ordered petitioner to cease and desist from the unfair labor practices found, to bar-

[illegible] upon [illegible] with the [illegible] ity, to offer reinstatement, with back pay, to the discharged employee, and to post the usual notice (R. 55-57).

III

THE COURT BELOW

On February [illegible], the court below, sustaining the Board, held that petitioner was an integral part of Chevrolet's nationwide operations and that its activities affected commerce within the meaning of the Act. Approving the Board's findings of unfair labor practices, the court entered a decree enforcing the Board's order (R. 354-357.)

SUMMARY OF ARGUMENT

The Board's power, which is as broad as Congress could make it, extends to all enterprises, whether or not they are themselves engaged in interstate commerce, where a stoppage due to unfair labor practices would tend to impede or obstruct such commerce. *Polish National Alliance v. National Labor Relations Board*, 322 U. S. 643; *National Labor Relations Board v. Denver Bldg. Council*, 341 U. S. 675, 684. That power is clearly broad enough to reach petitioner which (1) purchases substantial quantities of goods originating outside of the state, (2) is an integral part, in terms of the relevant economic realities, of Chevrolet's interstate operations, and (3) receives large quantities of goods which continue to move in commerce until they reach petitioner.

A. 1. Petitioner purchases annually from Chevrolet over $990,000 worth of vehicles and chassis and $100,000 worth of parts and accessories. Some 60 percent of the parts from which Chevrolet assembles the vehicles come from outside the state. Similarly, 40 percent of the parts and accessories petitioner buys are brought into California by Chevrolet, warehoused there, and then shipped on to petitioner and other dealers. These facts, even apart from petitioner's close ties with the vast Chevrolet enterprise, sustain the Board's jurisdiction.

2. It is clear that a stoppage of petitioner's operations would obstruct the flow of goods Chevrolet brings to California for its dealers. And it is immaterial that the shipments from Chevrolet to petitioner are made within California. Where, as here, the effect on commerce is close and substantial, it is within the power to regulate activity "affecting commerce" notwithstanding that the amount of the injury, when viewed in isolation, is insubstantial. *National Labor Relations Board* v. *Denver Bldg. Council*, 341 U. S. 675; *National Labor Relations Board* v. *Fainblatt*, 306 U. S. 601; *Consolidated Edison Co.* v. *National Labor Relations Board*, 305 U. S. 197.

Equally immaterial is the suggestion that other dealers would take over the halted sales and service normally handled by petitioner and that the loss to commerce, considering petitioner's enter-

price alone, would be slight or nonexistent. *National Labor Relations Board v. Bradford Dyeing Ass'n*, 310 U. S. 318, 326." Indeed, the very fact "that the immediate situation is representative of many others throughout the country, the total incidence of which if left unchecked may well become far-reaching in its harm to commerce," argues decisively in favor of the Board's jurisdiction. *Polish National Alliance*, *supra*, at 647-648.

2. The case for the Board's jurisdiction becomes clear beyond doubt upon consideration of petitioner's relationship to Chevrolet. Serving, along with other dealers, as Chevrolet's "direct selling contact with the public," petitioner is tightly integrated with, and controlled by, Chevrolet. To plan its huge purchases and shipments of interstate goods, Chevrolet requires frequent reports from its dealers on their present and anticipated needs. Recognizing that the end of all its nationwide activities is sales and service of its products, Chevrolet closely supervises its dealers to insure achievement of this end. Operating under this detailed control, petitioner is in economic fact, as the First Circuit (with which the court below agreed) has held, tied "into a vast national network of an integrated distribution system which affects commerce." *National Labor Relations Board v. Ken Rose Motors, Inc.*, 193 F. 2d 769, 771.

B. While it is unnecessary to sustain the deci-

sion below, *Standard Oil Co.* v. *Federal Trade Commission*, 340 U. S. 231, makes it clear that at least the substantial quantity of parts and accessories petitioner purchases from Chevrolet were "in commerce" until they reach petitioner's establishment. Accordingly, there is no basis for the single argument—fallacious in any event—with which petitioner attacks the Board's jurisdiction.

The *Standard Oil* case held that sales by an "interstate producer * * * to a local distributor" were "in commerce" where, though the sales were made within a single state, it was shown that (1) the "customers' demands could be accurately estimated" and (2) the goods were brought into the state and stored by the interstate producer awaiting sale. Here, maintaining close supervision over its dealers, Chevrolet is of course in a position to gauge their needs. And, as in *Standard Oil*, it brings its products into the state in a steady flow, with the halt in its warehouses functioning only as "a convenient intermediate step in the process of getting them to their final destinations * * *." *Walling* v. *Jacksonville Paper Co.*, 317 U. S. 564, 568.

Since the parts and accessories remain "in commerce" until they reach petitioner, there is ample basis for the Board's jurisdiction even by the outworn test of "direct" effects on commerce which petitioner invokes.

ARGUMENT

The Board's finding that petitioner's operations affect commerce within the meaning of the Act is valid

Section 10 (a) of the Act empowers the Board to prevent unfair labor practices "affecting commerce." Section 2 (7) defines the term "affecting commerce" to mean "in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce." It is settled that in this Act Congress "in order to protect interstate commerce from adverse effects of labor disputes has undertaken to regulate all conduct having such consequences that constitutionally it can regulate. * * * Congress * * * left it to the Board to ascertain whether proscribed practices would in particular situations adversely affect commerce when judged by the full reach of the constitutional power of Congress." *Polish National Alliance* v. *National Labor Relations Board*, 322 U. S. 643, 647–648. Accordingly, the Board's jurisdiction extends to any enterprise, including intrastate enterprises, where a stoppage of business operations resulting from industrial strife attributable to unfair labor practices would tend to impede or disrupt the free flow of goods in their normal channels of interstate commerce. *Ibid.*; *National Labor Relations Board* v. *Jones & Laughlin*, 301 U. S. 1, 36; *National Labor Relations Board* v. *Fainblatt*,

306 U. S. 601, 607; *Santa Cruz Co.* v. *National Labor Relations Board*, 303 U. S. 453, 467; *National Labor Relations Board* v. *Bradford Dyeing Association*, 310 U. S. 318, 326; *National Labor Relations Board* v. *Denver Bldg. Council*, 341 U. S. 675, 684; cf. *Mandeville Island Farms, Inc.* v. *American Crystal Sugar Co.*, 334 U. S. 219, 234, 236; *United States* v. *Women's Sportswear Association*, 336 U. S. 460, 464.

Applying this familiar test, the court below and the Court of Appeals for the First Circuit (in *National Labor Relations Board* v. *Ken Rose Motors, Inc.*, 193 F. 2d 769, and *National Labor Relations Board* v. *Somerville Buick, Inc.*, 194 F. 2d 56) have held that dealers like petitioner fall within the Board's jurisdiction over unfair labor practices affecting commerce. We submit that this conclusion, though disputed by the Court of Appeals for the Sixth Circuit,[7] is clearly correct.

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[7] *National Labor Relations Board* v. *Bill Daniels, Inc.*, 202 F. 2d 579, pending on the Board's petition for certiorari, No. 81, this Term. Except for this decision, the courts of appeals have uniformly sustained the Board's exercise of jurisdiction over automobile dealers. *National Labor Relations Board* v. *Henry Levaur, Inc.*, 115 F. 2d 105 (C. A. 1), certiorari denied, 312 U. S. 662; *Williams Motor Co.* v. *National Labor Relations Board*, 128 F. 2d 960 (C. A. 8); *National Labor Relations Board* v. *Townsend*, 185 F. 2d 378, 382 (C. A. 9), certiorari denied, 341 U. S. 909; *National Labor Relations Board* v. *Davis Motors, Inc.*, 192 F. 2d 782 (C. A. 10); *National Labor Relations Board* v. *Conover Motor Co.*, 192 F. 2d 779 (C. A. 10). While the dealers in most of these

For petitioner, while the vehicles and parts it purchases happen to be shipped to it from an assembly plant and warehouse within California where its business is located, is engaged in operations which obviously and substantially affect commerce. This would be so, as we show in the first portion of our argument, even if the products petitioner purchases were deemed to end their interstate journey before they reached petitioner. But the fact is, in addition, that at least as to the parts and accessories shipped to petitioner after a stopover in Chevrolet's California warehouse, the movement "in commerce" continues until its destined end at petitioner's premises.

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cases have imported cars and parts "directly" from outside the state, this factor is, in our view (and the view adopted by the First and Ninth Circuits), no basis for distinguishing the cases. It is noteworthy that even the Sixth Circuit, which has adopted a contrary position in the *Bill Daniels* case, recognized, when dealing with the Federal Trade Commission Act, that the sale of automobiles by local dealers was subject to the federal commerce power. In *Ford Motor Company v. Federal Trade Commission*, 120 F. 2d 175, 183, certiorari denied, 314 U. S. 668, that court declared: "The sale on credit [*cf.* fn. 4, p. 6, *supra*] of [Ford's] cars by its local dealers, when separately considered, may be intrastate in character but when the activities of [Ford's] local agencies are weighed in the light of their relationship to [Ford], and its financing sales of cars, it is at once apparent that there is such a close and substantial relationship to interstate commerce that the control of such activities is appropriate to its protection."

A. Petitioner, as a purchaser of large quantities of goods originating outside the state and as an integral part of Chevrolet's multi-state operations, is engaged in operations "affecting commerce"

1. The record shows (see pp. 3-4, *supra*) that petitioner's annual purchases of vehicles and chassis from Chevrolet total over $960,000, and its purchases of parts and accessories over $129,000. While the vehicles are assembled at, and shipped from, Chevrolet's assembly plant within California, some 43 percent of the parts of which they are composed come from outside the State. As to the parts and accessories shipped to petitioner from Chevrolet's California warehouse, 43 percent of these too come to the warehouse from other States.

If it were necessary to rely on these facts alone, without considering the intimate and substantially unitary relationship between petitioner and Chevrolet, we think they would be sufficient to sustain the Board's jurisdiction. It is clear that a stoppage in petitioner's operations "would * * * have a direct effect upon the interstate activities of [Chevrolet] whose production schedule is geared to the needs of [its] dealers. A stoppage of [petitioner's] business would necessarily affect the manufacturers' production—a cutback in production would in turn affect the interstate activities of those furnishing materials required for such production." *National Labor Relations*

Board v. *Conover Motor Company*, 192 F. 2d 779, 781 (C. A. 10). Even aside from the production parts which flow to California for assembly by Chevrolet and shipment to petitioner, there would be ample basis for the Board's power in the large quantity of parts and accessories which are merely warehoused by Chevrolet after arrival in California and then shipped on without assembly to petitioner and other dealers. For a cessation of petitioner's business would have an immediately discernible impact on the need for these parts and accessories—in goods, that is, destined solely, and without further fabrication, for petitioner and other dealers similarly situated. And a threat of obstruction to interstate shipments of such magnitude is plainly substantial enough to sustain the Board's jurisdiction. *Cf. National Labor Relations Board* v. *Denver Bldg. Council*, 341 U. S. 675; *Carpenters Union* v. *National Labor Relations Board*, 341 U. S. 707.

The single premise on which petitioner attacks the Board's jurisdiction—that there is no movement in interstate commerce from Chevrolet to petitioner since the shipments to petitioner travel only from Chevrolet's California assembly plant and warehouses to petitioner's premises in California—would be unavailing even if it were correct. (See pp. 33–36, *infra.*)[8] The Board's power,

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[8] It bears mention in passing, though it anticipates matters considered more fully below, that the prime fact on which petitioner relies—the fact that Chevrolet ships the vehicles

as broad as Congress could confer, reaches unfair labor practices which "affect" commerce. To sustain the exercise of such power it has long been unnecessary "to search for some sharp point or line where interstate commerce ends and intrastate commerce begins, in order to decide whether Congress' commands were effective. For * * * the exact location of this line made no difference * * *." *Mandeville Island Farms, Inc.* v. *American Crystal Sugar Co.*, 334 U. S. 219, 232. It is enough that the activity "exerts a substantial economic effect on interstate commerce, and this irrespective of whether such effect is what might at some earlier time have been defined as 'direct' or 'indirect.'" *Wickard* v. *Filburn*, 317 U. S. 111, 125.

The power Congress conferred on the Board "is not limited to transactions which can be deemed to be an essential part of a 'flow' of interstate or foreign commerce." *National Labor Relations Board* v. *Jones & Laughlin*, 301 U. S. 1, 36. And so it is settled that the Board has jurisdiction over "a privately owned public utility whose business and activities are carried on wholly within a single state" because a cessation

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and parts from within California—is itself an apparently fortuitous and variable circumstance. For Chevrolet, integrating petitioner and other dealers into a coordinated national system of distribution, retains the right to ship to petitioner "from whatever point it [Chevrolet] may select" (App. B, *infra*, p. 40).

of such a utility's operations would impede or obstruct interstate activities. *Bus Employees* v. *Wisconsin Employment Relations Board*, 340 U. S. 383, 391; *Consolidated Edison Co.* v. *National Labor Relations Board*, 305 U. S. 197. Similarly, the Board may prevent unfair labor practices in manufacturing enterprises, whether or not the raw materials move to the factory across state lines, where the products are destined for sale in interstate commerce. *Santa Cruz Co.* v. *National Labor Relations Board*, 303 U. S. 453; *cf. National Labor Relations Board* v. *Jones & Laughlin*, 301 U. S. 1. For it is clear in such cases that "the cessation of manufacture necessarily results in the cessation of the movement of the manufactured product in interstate commerce." *National Labor Relations Board* v. *Fainblatt*, 306 U. S. 601, 604.

The same kind of practical economic judgment is decisive against petitioner's argument here. It is of no consequence that the obstruction to commerce arises from an activity which follows, rather than precedes, the interstate movement of the products. *Cf. National Labor Relations Board* v. *Denver Bldg. Council*, 341 U. S. 675 (jurisdiction upheld over electrical subcontractor on building project who had purchased $225 worth of out-of-state materials for job involved, purchased some $56,000 in out-of-state materials annually, and purchased intrastate $20,000 in materials which had been produced in other

states); *Carpenters Union* v. *National Labor Relations Board*, 341 U. S. 707 (same as to unfair labor practices affecting installation in private dwelling of floor and wall coverings where employer involved purchased semi-annually some $30,000 in goods shipped from other states, purchased intrastate a similar amount manufactured out of state, and made a small amount of interstate sales); *United States* v. *Sullivan*, 332 U. S. 689.[7] What matters is that petitioner's "phase * * * of the total economic process" (*Mandeville Island Farms, Inc.* v. *American Crystal Sugar Co.*, 334 U. S. 219, 233) is the essential end and aim of a massive interstate movement which would be obstructed if petitioner's business were halted. For "it is the effect upon interstate or foreign commerce, not the source of the injury, which is the criterion." *Consolidated Edison Company* v. *National Labor Relations Board*, 305 U. S. 197, 222. See, also, *National Labor Relations Board* v. *Jones & Laughlin*, 301 U. S. 1, 37; *United States* v. *Women's Sportswear Assn.*, 336 U. S. 460, 464; *Second Employers' Liability Cases*, 223 U. S. 1, 51.

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[7] Indeed, an enterprise may be subject to the power to regulate activities affecting commerce though it involves the production of particular goods which have not been in, and are not destined for, interstate commerce. *United States* v. *Wrightwood Dairy Co.*, 315 U. S. 110; *Wickard* v. *Filburn*, 317 U. S. 111.

The controlling force of this principle in this case is not diminished by the suggestion (Pet. Br. 8) that "elimination of Petitioner from the market * * * would not affect the sales of the products of General Motors Corporation but would merely reduce the number of sellers of that product who are bidding for the available market." It is settled that where the effect of a labor dispute would be an obstruction to commerce, the existence of alternative enterprises which might take over the halted operations is no "bar to the Board's jurisdiction. *National Labor Relations Board* v. *Bradford Dyeing Assn.*, 310 U. S. 318, 326. Even though the effect on commerce in the single case, viewed in isolation, is slight—and though even this effect by itself might be dissipated over time by increased activity in completing enterprises—"the Board's jurisdiction can attach, as here, before actual industrial strife materializes to obstruct that commerce." *Ibid.* It is "[a]ppropriate for judgment * * * that the immediate situation is representative of many others throughout the country, the total incidence of which if left unchecked may well become far-reaching in its harm to commerce." *Polish National Alliance* v. *National Labor Relations Board*, 322 U. S. 643, 647–648; *National Labor Relations Board* v. *Denver Bldg. Council*, 341 U. S. 675, 685, n. 14; see, also, *Mandeville Island Farms, Inc.* v. *American Crystal Sugar Co.*, 334 U. S. 219, 236. Where

this is so, as it is in this case, there is no need to show (*cf.* Pet. Br. 9) "any specific effect upon interstate commerce * * *; it is enough that the individual activity when multiplied into a general practice * * * contains a threat to the interstate economy that requires preventive regulation." *Mandeville, supra*, at 236.[8]

2. There is substantially greater justification for the Board's assertion of jurisdiction over petitioner than there is in the ordinary case of a distinct and separate "individual activity" which may threaten commerce "when multiplied into a general practice * * *." By virtue of its sales agreement with Chevrolet, from which petitioner derives its entire business character and purpose for being, petitioner is in plain fact "an integral part" of a unitary enterprise which is heavily engaged in commerce. Cf. *Carpenters Union v. National Labor Relations Board*, 341 U. S. 707, 712.

[8] Petitioner's reliance (Br. 11) on *Federal Trade Commission v. Bunte Bros.*, 312 U. S. 349, is plainly misplaced. There, expressly contrasting the National Labor Relations Act as a statute in which "Congress has regulated activities which in isolation are merely local" (p. 351), the Court was concerned with the scope of the prohibition in the Federal Trade Commission Act against unfair practices "in commerce." Where, as in the Labor Act, Congress describes the power being exercised as extending to activities "affecting"—not merely those "in"—commerce, it "is not indulging stylistic preferences," but is announcing its decision to exert "the full sweep of its constitutional authority * * *." *Polish National Alliance, supra*, at 647.

As reflected in its very title, petitioner is a "Chevrolet" dealer. Together with other dealers of the same character, it serves as Chevrolet's virtually exclusive "direct selling contact with the public."[9] To a very large extent, then, the goal of all the gigantic productive and distributive efforts comprising one of the Nation's greatest industries is realized only through sales and service operations in such establishments as petitioner's.

Recognizing—indeed, playing a leading role in the creation of—these economic realities which petitioner's argument would ignore (cf. *National Labor Relations Board* v. *Jones & Laughlin*, 301 U. S. 1, 41), Chevrolet (General Motors) links petitioner and its other dealers tightly to itself and to the myriad streams of interstate commerce it generates. Petitioner is bound to, and subject to the control of, Chevrolet, not by "gossamer threads," but by "solid ties" (*Polish National Alliance, supra*, at 651) of self-interest, economic dependence, and contractual obligation.

In no way sharing petitioner's view that what happens in California is divorced from interstate commerce, Chevrolet requires a report every ten days on petitioner's sales, stocks, and orders "[i]n order to permit [Chevrolet] to keep its purchases of raw materials and the production and distribution of Chevrolet motor vehicles and

[9] Federal Trade Commission, *Report on Motor Vehicle Industry*, H. Doc. No. 468, 76th Cong., 1st Sess., p. 110 (1939).

chassis in line with retail sales * * *." (App. B, *infra*, p. 39.) To the same end, Chevrolet requires a monthly estimate of petitioner's needs for vehicles and chassis during each of the ensuing three months. Chevrolet determines the location and checks on the arrangement of petitioner's premises; checks on the amount and structure of petitioner's working capital; requires petitioner to purchase special tools and maintain specified stocks of parts and accessories. Petitioner must display standard Chevrolet signs, submit its accounts and premises to Chevrolet's inspection, and contribute to advertising funds largely administered by Chevrolet. The elaborate controls Chevrolet exercises over petitioner are spelled out in greater detail above, pp. 4-13. It suffices here to point the inescapable conclusion that the operations of petitioner and other dealers are economically inseparable from and essential to the vast interstate activities of Chevrolet.

In the face of the economic facts, the effort to defeat the Board's jurisdiction is scarcely advanced by the happenstance that petitioner is located within a state where Chevrolet maintains one of its many assembly plants and groups of warehouses.[13] As we have noted (fn. 6, pp. 22-23,

[13] Moody's *Manual of Investments* (*Industrials*) for 1953, p. 2512, reports for the Chevrolet Division of General Motors twenty manufacturing plants scattered over ten states, including two in California. The figures for 1950 were the same. *Id.* (1950), p. 2850.

supra), Chevrolet, viewing itself and its dealers as a highly integrated whole, reserves the right to ship its products to petitioner from any point dictated by its (Chevrolet's) economy and efficiency. But apart from this, and confining ourselves to the record of shipments to petitioner from Chevrolet within California, the critical fact remains that a substantial quantity of these goods merely flowed through Chevrolet's California establishment (some to be assembled into vehicles, others merely to be warehoused for transshipment) and on to petitioner. And this fact in turn, though in itself decisive, is only part of the picture of petitioner's role as an integral unit of a multistate enterprise.

Appraising the identical circumstances in *National Labor Relations Board* v. *Ken Rose Motors, Inc.*, 193 F. 2d 769, a decision on all fours with the decision below (with the immaterial difference that it involved a Ford rather than a Chevrolet dealer), the Court of Appeals for the First Circuit said (p. 771):

> The * * * Sales Agreement ties the [dealer] into a vast national network of an integrated distribution system which affects commerce. The activities of Ford and [the dealer] are shaped to a pattern which is found throughout the nation.

The record shows (R. 95, 97) that between $750 and $1,000 worth of Chevrolet products were shipped by Chevrolet to petitioner directly from outside of California during the period from October 1, 1949, to September 30, 1950. The Board placed no reliance on this factor and it seems unnecessary to invoke it here.

Because this is so, we think it clear that the Court of Appeals for the Sixth Circuit erred in disagreeing with the First and Ninth Circuits on the ground that "[i]n order to be an integral part of Ford [or Chevrolet] these dealers would have to be either employees or agents of Ford [or Chevrolet]." *National Labor Relations Board* v. *Bill Daniels, Inc.*, 202 F. 2d 579, 585, pending on the Board's petition for certiorari, No. 81, this Term. As the court below observed in answer to this argument (R. 337), "the impact of automobile sales agreements of the kind here involved upon [the question whether the employer's activities bear a sufficient relation to commerce to sustain the Board's jurisdiction] is not dependent upon whether those agreements square with common law concepts of principal and agent, or employer and employee. Rather, * * * the important matter is, how does the arrangement work?" For "commerce among the States is not a technical legal conception, but a practical one, drawn from the course of business." *Swift & Company* v. *United States*, 196 U. S. 375, 398; *Wickard* v. *Filburn*, 317 U. S. 111, 122.

Viewed in the practical economic terms which count here, petitioner is truly a part—and an essential part—of Chevrolet's interstate operations. It is clear, at the very least, that petitioner's enterprise is peculiarly suited for inclusion among those which, however modest their activities may seem in isolation, "contribute in the

aggregate a vast volume of interstate commerce." *National Labor Relations Board* v. *Fainblatt*, 306 U. S. 601, 607. See pp. 25–26, *supra*. Like all such businesses, petitioner's is subject to the Board's jurisdiction.

This conclusion is no basis, of course, for petitioner's fears that the Board's power is being extended to cover "not only the traditional butcher, baker and candlestick maker, but also the shoe repairman in his shop and the bootblack on the corner" (Pet. Br. 8). It may be noted that the Board has neither resources nor ambitions which should justify such alarm.[9] *Cf. United States* v. *Sullivan*, 332 U. S. 689, 694.

[9] As this Court observed in *National Labor Relations Board* v. *Denver Bldg. Council*, 341 U. S. 675, 684, "Even when the effect of activities on interstate commerce is sufficient to enable the Board to take jurisdiction of a complaint, the Board sometimes properly declines to do so, stating that the policies of the Act would not be effectuated by its assertion of jurisdiction in that case." In this connection, the Board has announced a set of standards which guide its discretion in determining whether to assert its jurisdiction under the Act. *Id.*, at 685, n. 14. So, for example, where its jurisdiction over an enterprise rests upon purchases by the enterprise of out-of-state goods, the Board will not ordinarily exercise its power unless there is a "direct inflow" exceeding $500,000 annually, an "indirect inflow" exceeding $1,000,000 annually, or a combination of these. However, where other factors are present, the Board may assert its jurisdiction even though these minima are not met. And one such factor leading the Board to take jurisdiction is a finding that the particular establishment in question is "operating as an integral part of a multistate enterprise." N. L. R. B., *Sixteenth Annual Report* (Govt. Print. Off., 1952), pp. 15–16.

But the important point, after all, is that "what is reasonably clear in a particular application is not to be overborne by the simple and familiar dialectic of suggesting doubtful and extreme cases." *Santa Cruz Co.* v. *National Labor Relations Board*, 303 U. S. 453, 467. The jurisdictional question under the Act must be faced upon the particular facts of each case. *Ibid.* All that matters here is that upon the facts of this case the Board and the Court of Appeals were correct in finding that petitioner's unfair labor practices were clearly a threat to the commerce broadly protected by the Act.

B. The movement of parts and accessories from outside of California, through Chevrolet's California warehouses, and on to petitioner is in interstate commerce

We have assumed thus far that petitioner is correct in the single assertion upon which it stakes its claim for reversal—the assertion that the goods it purchases from Chevrolet have ended their interstate journey (at Chevrolet's California warehouses) before they reach petitioner. It would make no difference, in our view, if this assertion were correct. But it is clear, in any event, under this Court's decision in *Standard Oil Co.* v. *Federal Trade Commission*, 340 U. S. 231, that at least the substantial quantity of out-of-state parts and accessories petitioner purchases from Chevrolet continues to move in interstate commerce until it reaches petitioner.

The undisputed facts relevant here are that petitioner purchases annually about $129,000 worth of parts and accessories from Chevrolet; that, although these are shipped to petitioner from Chevrolet's California warehouse, they originate from all over the United States, 43 percent—or over $50,000 worth—coming from outside the State. *Supra*, p. 4.[14] It is evident that, with petitioner and similar dealers serving as Chevrolet's "direct selling contact with the public" (fn. 9, *supra*, p. 27), such parts and accessories flow into and through Chevrolet's California warehouses for the sole and precise purpose of supplying these dealers in their sales and service operations. It seems clear in these circumstances that "the halt in the movement of the goods is a convenient intermediate step in the process of getting them to their final destinations," and that "they remain 'in commerce' until they reach those points." *Walling* v. *Jacksonville Paper Co.*, 317 U. S. 564, 568.

The *Jacksonville Paper* case indicated "that a wholesaler's course of business based on anticipation of needs of specific customers * * * might * * * at times be sufficient to establish that practical continuity in transit necessary to keep

[14] The sales agreement provides for sale of parts and accessories by Chevrolet to petitioner either "direct or through a designated parts warehouse * * *." App. B, *infra*, p. 42. Under stated circumstances, petitioner may return such items for credit by shipping them "to the destination specified by [Chevrolet]." *Id.*, pp. 44, 45.

a movement of goods 'in commerce' * * *." *Id.* at 570. Further, the Court there held that goods ordered by a retailer pursuant to a "contract or understanding" from a wholesaler in the same state remained "in commerce" throughout their journey from outside the state through the wholesaler's warehouse to the retailer. *Id.* at 569. We think that decision standing alone might well sustain our position here. See, also, *Federal Trade Commission* v. *Pacific States Paper Trade Assn.*, 273 U. S. 52; *Binderup* v. *Pathe Exchange*, 263 U. S. 291.

But any doubt on this point is dispelled by the more recent decision in *Standard Oil Co.* v. *Federal Trade Commission*, 340 U. S. 231, 237-238. In that case Standard brought out-of-state gasoline to its terminal at River Rouge, Michigan, where it was stored for varying periods and then sold pursuant to individual orders to independent customers in Detroit. 340 U. S. at 236, 237. "'Although the gasoline was not brought to River Rouge pursuant to orders already taken, the demands of the Michigan territory were fairly constant, and [Standard's] customers' demands could be accurately estimated, so the flow of the stream of commerce kept surging from [Standard's out-of-state refining plant] to Detroit.' 173 F. 2d at 213–214." 340 U. S. at 237. The Court concluded that the sales by Standard to its customers were "in commerce" notwithstanding the "temporary storage of the gasoline * * *

within the Detroit area," expressly noting that the sales were "those of an interstate producer and refiner to a local distributor." 340 U. S. at 238, n. 6.

That ruling applies squarely to the sales here "of an interstate producer [Chevrolet] * * * to a local distributor [petitioner]." Accordingly, the very starting point for petitioner's argument disappears. Cessation of petitioner's operations, which would so clearly affect commerce in any case, would most assuredly affect that stream of commerce which flows to the very doors of petitioner's establishment.

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment of the court below should be affirmed.

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National Labor Relations Board.

November 1953.

APPENDIX A

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Supp. V, 151, *et seq.*), are as follows:

SEC. 2. When used in this Act—

* * * * *

(6) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country, any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

* * * * *

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. * * *

APPENDIX B

CHEVROLET MOTOR DIVISION

GENERAL MOTORS CORPORATION

Terms and conditions

DIRECT DEALER

The following Terms and Conditions have by reference been incorporated in and made a part of the Selling Agreement which shall apply to and govern all transactions, dealings and relations between the parties:

SELLING RIGHTS, TERMS AND CONDITIONS OF SALE

1. DEALER'S SELLING PRIVILEGE

While this Agreement shall be and remain in effect, Dealer shall have the non-exclusive privilege of selling new Chevrolet motor vehicles and chassis and the privilege of using the word "Chevrolet" and the Chevrolet trade-mark or trade-marks, including the distinctive outline or form thereof, as applied to Chevrolet motor vehicles and chassis, parts and accessories.

2. HANDLING OF DEALER'S ORDERS

A. Three months' estimate of requirements

Dealer will, unless otherwise advised by Seller, furnish Seller for its general guidance every month, on the date specified by Seller, but not later than the sixth day of each month, an esti-

mate, on forms provided by Seller, of his requirements of new Chevrolet motor vehicles and chassis for the three (3) calendar months next following, each month's estimate to be shown separately.

B. Ten day report

In order to permit Seller to keep its purchases of raw materials and the production and distribution of Chevrolet motor vehicles and chassis in line with retail sales, Dealer will furnish Seller, every ten (10) days, with a report known as the "Ten-Day Report" on standard forms supplied by Seller. Such report shall show retail sales of both new and used cars made during said period, new and used car stocks, and unfilled orders on hand at the end of said period.

C. Orders

Dealer's orders for Chevrolet motor vehicles and chassis shall be submitted upon order forms supplied by Seller, at intervals mutually satisfactory. If, however, in any month Seller does not ship the standard products which were scheduled for delivery during that month, the orders for such undelivered standard products will remain in effect unless cancelled in whole or in part by either Seller or Dealer upon written notice served by the one upon the other.

However, orders for special motor vehicles and chassis may be cancelled only by Seller.

Any motor vehicle or chassis which differs in any way from the standard specifications therefor as adopted by Seller or special equipment of any type shall be considered "special".

D. Failure to fill orders

Seller shall not be liable for failure or delay in filling orders of Dealer where such failure or delay is due, in whole or in part, to any cause beyond Seller's control or to any material, labor or utility shortage or curtailment or to any labor trouble in the plants of Seller or its suppliers or where delivery is prohibited, prevented or delayed by reason of any governmental or judicial action or proceeding, whether or not arising out of Seller's fault, and Dealer hereby releases and discharges Seller from any and all liability for any and all damages and losses arising from the failure of Seller to fill any orders placed hereunder.

3. PAYMENT BY DEALER

Dealer shall pay Seller for each shipment of new Chevrolet motor vehicles and chassis, Dealer's price from Seller in effect at the time of such shipment, together with a Factory Handling Charge determined by Seller which shall include reimbursement to Seller for any tax which it has paid, incurred or agreed to pay on any such motor vehicles or chassis, on the following terms: cash, sight draft, or sight draft with bill of lading attached payable with collection charges. Dealer shall pay interest on all drafts in the amounts and from the dates specified therein.

4. CAR SHIPMENTS

A. Mode of shipment

Seller has the right to ship all motor vehicles and chassis purchased by Dealer hereunder by

whatever mode of transportation and from whatever point it may select. * * *

* * * * *

5. CHANGE IN PRICING

A. Seller's rights

Seller has the right at any time to change prices, discounts, terms and provisions affecting any of its current models or body types of motor vehicles or chassis, and to issue new Price Lists with respect thereto.

If Seller changes prices, discounts, terms and provisions, such changed prices, discounts, terms and provisions shall apply to all motor vehicles and chassis ordered by Dealer and unshipped by Seller at the time that the same are made effective by Seller.

B. Price increases

Seller shall give written notice to Dealer of any change increasing the price to be paid by Dealer before shipping any motor vehicle or chassis to which such change is applicable. Upon receipt of such notice, Dealer may cancel orders or parts thereof for motor vehicles or chassis to which such change applies, provided written notice of election to cancel is delivered to Seller within ten (10) days after receipt by Dealer of Seller's notice. Failure to so elect within the time specified will constitute a confirmation of all unshipped orders for delivery in accordance with said change.

* * * * *

7. MODEL CHANGE AT REDUCED LIST PRICE

If, at the time new models or body types are announced, the list prices of such new models or body types are reduced from the list prices of the same model or body type of the discontinued series, Seller will refund or credit to Dealer a proportionate amount on the price paid by Dealer for those new unused motor vehicles and chassis of the discontinued series which are in Dealer's stock unsold at the time such new models and body types are announced, provided, however, that such refunds will not be paid in the case of such radical changes in size, design and price as to make such new models and body types, for all practical purposes, a new and different line of motor vehicles. In the latter event Seller will make such refunds or allowances as shall, in its opinion, seem equitable under the circumstances.

* * * * *

8. CHANGE OF DESIGN

Seller has the right to change the design of any new Chevrolet motor vehicle, chassis, accessories or parts thereof at any time, without notice to Dealer. If Seller shall make a change in design, there shall be no obligation upon Seller to make such change upon any Chevrolet motor vehicles, chassis, accessories, parts or other products manufactured or sold or being manufactured or sold in accordance with orders of Dealer; nor shall Seller be obligated to make a similar or corresponding change or substitution on any Chevro-

let motor vehicle, chassis, accessory or other part or product purchased by or shipped to Dealer.

* * * * *

16. PARTS AND ACCESSORIES

A. Selling rights

Seller hereby grants to Dealer the non-exclusive right to sell new genuine Chevrolet parts and accessories and Seller will sell Dealer direct or through a designated parts warehouse, such new genuine Chevrolet repair parts and accessories.

"Genuine Chevrolet parts" as used in this Agreement are defined as being parts manufactured by or for Seller, designed for use on Chevrolet motor vehicles or chassis, and distributed by Seller or any division or subsidiary of General Motors Corporation.

B. Prices

Sale of parts and accessories to Dealer will be made according to the prices, terms and provisions specified in the current Dealer Price List issued by Seller or according to such different prices, terms and provisions as may hereafter from time to time be established by Seller.

C. Billing and payment

Parts and accessories ordered by Dealer as aforesaid, will be invoiced to Dealer by Seller, and settlement therefor made by Dealer with Seller except in the case of dealers having current Selling Agreements covering two or more of the following makes of motor vehicles: Chevrolet, Pontiac and Oldsmobile. In the latter event

the divisions of General Motors Corporation with which Dealer has such Selling Agreements will agree among themselves on which one of them will carry such Dealer's account, and thereupon all parts and accessories ordered by such Dealer will be invoiced for the account of such division and Dealer will make settlement of such invoices with the division for whose account same are rendered.

Parts and accessories ordered by Dealer hereunder will be billed net cash payable the tenth of the month following date of billing, collection charges, if any, to be paid by Dealer.

D. Return of defective parts and accessories

After receiving specific authorization from Seller, Dealer may return defective Chevrolet parts and accessories to Seller for credit at Dealer's net prices in effect at date such parts and accessories are received by Seller, such parts and accessories to be shipped, transportation charges prepaid, to the destination specified by Seller. Dealer will be reimbursed for transportation charges prepaid by him on authorized shipments of defective parts and accessories made hereunder.

E. Return of inactive items

In the event Dealer develops an inactive stock of genuine Chevrolet parts, or for any other reason desires to liquidate a portion of his parts stock, Dealer may submit to Seller a list of those parts, in good condition and unused, which he desires to return for credit. Seller shall, as promptly as possible, notify Dealer as to the

parts, if any, on said list which Seller will accept and the price at which same will be accepted. Thereupon Dealer may ship to the destination specified by Seller, transportation charges prepaid, the parts which Seller has agreed to accept.

F. Right to return parts and accessories within thirty days

Dealer may return any new Chevrolet parts and accessories purchased hereunder, which are in good condition and unused, for credit within thirty (30) days after receipt thereof by Dealer, such parts and accessories to be shipped to the destination specified by Seller, transportation charges prepaid. Credit on new Chevrolet parts and accessories will be at Dealer's net prices. With respect to accessories, Dealer shall be entitled to return same whether same were purchased separately or shipped on or with a new Chevrolet motor vehicle. Under the same conditions, Dealer may return anti-freeze, polishes, chemicals and other similar items purchased hereunder for credit at Dealer's net prices.

Dealer, however, will not be entitled to return materials which are acquired or fabricated specially by Seller upon Dealer's order for a particular service order or car, including unlisted parts or assemblies and any cut or fabricated upholstery or trim items.

OPERATING REQUIREMENTS

11. DEALER'S PERSONAL SERVICES

Each person named in Paragraph Third of this Agreement shall devote his full time, attention,

and energy to the conduct of Dealer's business hereunder.

12. DEALER'S PLACE OF BUSINESS SATISFACTORY TO SELLER

Dealer will maintain a place of business including salesroom, service station, parts and accessories facilities, and used car facilities satisfactory to Seller and will maintain the business hours customary in the trade. Dealer will permit Seller to inspect said place of business at all reasonable times in business hours.

Dealer will not move to or establish a new location, branch sales office, branch service station or place of business including any used car lot or location without the prior written consent of Seller.

13. BUILDING SERVICE FOR DEALER

Seller will, upon request, but without liability to Dealer with respect thereto, furnish to Dealer a suggested building plan and layout, but such plan and layout will not be intended for use as a complete working plan and will be furnished solely as a suggestion.

14. CAPITAL REQUIREMENTS

Since the amount and structure of working capital and net worth required to handle properly the business to be conducted by Dealer hereunder depends upon many factors, including size of market, sales and service facilities required, anticipated volume and others and since Seller has set

standards for Dealer capital and net worth based on Seller's past experience, Dealer shall establish his owned net working capital and net worth in the respective amount and form specified by Seller. If the amount of owned net working capital or net worth or the way in which either is set up is now or hereafter inadequate in Seller's estimation for the proper handling of Dealer's business, Dealer will take the necessary steps to meet Seller's applicable requirements within the time determined by Seller.

16. ACCOUNTS AND RECORDS

A. *Uniform accounting system*

It is to the mutual interests of Seller and Dealer that uniform accounting systems and practices be maintained by dealers in order that Seller may develop standards of operating performance which will enable dealers to obtain the most satisfactory results from the sales potentials assigned to them and which will enable Seller to prepare composite dealer profit statements periodically to guide Seller in formulating policies beneficial to the dealers' interests.

Accordingly, Dealer will use and keep up to date at all times a satisfactory uniform accounting system designated by Seller and will furnish to Seller, by the tenth of each month, a complete and accurate financial and operating statement with supporting data covering the preceding month's operations, showing the true and actual condition of Dealer's business. Dealer will maintain said system in strict accordance with the Accounting Manual prescribed by Seller.

B. *Examination of accounts and records*

In order to assure the maintenance of a uniform accounting system and practices, Dealer will permit an examination of his accounts and records to be made by a person or persons, either in the employ of Seller or acceptable to Seller, at such time or times as Seller may designate. A copy of the report of such examination will be furnished to both Seller and Dealer.

16. SATISFACTORY SALE OF MOTOR VEHICLES

Dealer shall properly develop to Seller's satisfaction the sale of Chevrolet motor vehicles and chassis in the territory described in Paragraph First.

17. SALES STAFF

Dealer shall maintain a staff of salesmen and a selling and customer relations organization adequate to take care of the sales potential of the territory described in Paragraph First.

18. SALES AND SERVICE RECORDS

In furtherance of the purposes, objectives, and obligations provided for in this Agreement, Dealer will keep complete and up-to-date records regarding the sale and servicing of new Chevrolet motor vehicles and chassis and will permit Seller at all reasonable times in business hours to inspect such records.

19. CUSTOMER COMPLAINTS

Dealer will receive, investigate and handle all complaints received from customers or prospective

customers with a view to promoting the goodwill of Seller and Dealer in the sale of Chevrolet products.

20. SUGGESTED PRICE TO RETAIL PURCHASER

A. Maximum price

Seller will prepare Advertised Delivered Prices on new Chevrolet motor vehicles and chassis at Flint, Michigan, and it is the desire of Seller that all retail customers wherever located be able to purchase such vehicles at not more than these prices, plus transportation charges and the retail installed prices of any optional equipment and accessories selected by the retail purchaser, all as shown in the current sheet of Suggested Maximum Retail Delivered Prices issued to Dealer by Seller from time to time, plus applicable taxes, if any.

Dealer will advertise his delivered prices in his town and will inform retail purchasers of such prices, and will give them itemized invoices covering the details of their purchases.

B. Right of retail purchaser to buy a new car without purchasing optional equipment or accessories

Dealer recognizes that a retail customer has the right to purchase new Chevrolet motor vehicles without being required to purchase any optional equipment or accessories and Dealer therefore will either remove any optional equipment or accessories which the purchaser does not want, or will immediately order a new Chevrolet

motor vehicle without such optional equipment or accessories.

C. Representation as to transportation charges

Dealer shall not make any statement intended to lead any purchaser to believe that a greater portion of the selling price of a new Chevrolet motor vehicle or chassis represents transportation charges and Factory Handling Charges than the amounts of such items actually charged to and paid for by Dealer.

VI. CARE OF OWNERS

Recognizing the importance of owner goodwill, dealer will furnish prompt and satisfactory service at reasonable cost to Chevrolet owners. In furtherance thereof Dealer will:

A. Conditioning of new motor vehicles

Condition each new motor vehicle and chassis before delivery, in accordance with Seller's pre-delivery inspection schedule.

B. Owner's service policy

Execute and deliver to each person who purchases a new Chevrolet motor vehicle or chassis from Dealer, an "Owner's Service Policy," on forms furnished by Seller as amended from time to time. Dealer will promptly perform and fulfill all the terms and conditions of said Policy.

C. Stock of parts

Carry in stock at all times during the life of this Agreement an adequate number and

assortment of parts and accessories to render proper service to owners of Chevrolet motor vehicles and chassis in Dealer's zone of influence.

D. Representation as to parts

Not sell, offer for sale, or use in the repair of Chevrolet motor vehicles and chassis as genuine new Chevrolet repair parts, any part or parts which are not in fact genuine new Chevrolet repair parts as defined in sub-paragraph A of Paragraph 19 hereof.

E. Special tools

Buy such special tools developed by Seller, as Seller shall deem necessary for Dealer to render proper service to owners. Further, Dealer authorizes and directs Seller to ship or cause to be shipped to Dealer in advance of delivery of new models, such special tools, the cost of which shall not exceed One Hundred Dollars ($100.00), as Seller deems essential to service such new models properly. Dealer will pay for such new model tools promptly on receipt thereof.

F. Mechanical staff

Employ a sufficient number of competent mechanics to meet adequately the service requirements of the Chevrolet owners in Dealer's zone of influence.

G. Flat rate system

Install the Chevrolet Flat Rate System of time allotments for service work as recommended and furnished by Seller and charge Seller for policy, warranty, and any other work performed by Dealer for

Seller's account on the basis of such time allotments and at one-half (½) of the labor rates related thereto, as agreed upon with Seller.

H. Warranty adjustment

Install any part or parts furnished by Seller under the warranty set forth in Paragraph 9 hereof on motor vehicles sold by Dealer without expense to the owner of such vehicles and Seller will, if the replaced part is returned to and found by Seller to be defective, pay or credit to Dealer one-half (½) of the flat rate charge for installing the new part or parts according to the Flat Rate System of time allotments and labor charges then in effect in Dealer's business as provided in sub-paragraph G above.

I. Customer relationship

Make every reasonable effort to satisfy owners of Chevrolet motor vehicles and chassis in the territory described in Paragraph First hereof, and to satisfy all persons purchasing Chevrolet motor vehicles and chassis from Dealer, and in pursuance thereof establish regular contact either by correspondence or personal interview, with such owners or purchasers. All complaints received by Dealer which cannot be readily remedied, shall be promptly reported to Seller with the name of the owner making same.

J. Inspection of facilities

Permit Seller to inspect and check over Dealer's service facilities and stock of parts and accessories at any reasonable time in business hours.

22. SIGNS

Dealer will purchase, erect, and maintain at his expense the following signs as hereinafter specified:

A. A standard product electric sign in a conspicuous place outside his showrooms provided the erection thereof is not prohibited by municipal ordinance or statute.

B. A standard authorized service sign in a suitable location on the outside of Dealer's place of business.

C. Such other signs as are necessary to advertise his business properly on a basis mutually satisfactory to both Seller and Dealer.

23. CHEVROLET NAME AND TRADE-MARKS

A. Seller's exclusive rights

Seller is entitled to the use of the word "Chevrolet", and the Chevrolet trade-mark or trade-marks, including the distinctive outline or form thereof, as applied to motor vehicles and chassis, parts and accessories, and of the goodwill attached thereto.

B. Discontinuance of use upon termination

If the word "Chevrolet" is used in the name under which Dealer's business is conducted or the word "Chevrolet" or any Chevrolet trade-mark including the distinctive outline or form thereof, is used in any sign or advertising displayed by Dealer, Dealer will, upon termination of this Agreement, or upon the request of Seller, discontinue the use of the same. Thereafter Dealer will not use, either directly or indirectly, in connec-

tion with any motor vehicle business, any Chevrolet trade-mark, including the distinctive outline or form thereof, the word "Chevrolet" or any other name, title, expression or mark so nearly resembling the same as to be likely to lead to confusion or uncertainty or to deceive the public. If Dealer is a corporation in whose corporate name the word "Chevrolet" is used, Dealer will promptly have the corporate name changed, eliminating said word "Chevrolet" therefrom.

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24. ADVERTISING FUND

In order to give to Chevrolet dealers the advantages of a comprehensive and coordinated dealer advertising program, an Advertising Fund, composed of a dealer portion and a factory portion, has been established and is administered by Seller for the purpose of supporting such a program.

A. Dealer portion of fund

Seller will collect the sum of Twelve Dollars ($12.00) for each new Chevrolet motor vehicle and chassis purchased and paid for by Dealer, and such sums will be credited to the dealer portion of the Advertising Fund for the account of Dealer.

The amounts contributed by Dealer shall be used solely in paying the cost of local advertising, including preparation expense, in Dealer's territory, through such local advertising media as, in the judgment of Seller, will benefit Dealer. If a dealer desires to participate in local advertising in a community outside his zone of influence, he may do so provided that he shall have secured the consent in writing of the dealer or dealers in

whose zone of influence such community is located, and shall have reached an agreement in writing as to the amount per car which is to be taken out of his contributions to the Advertising Fund and applied to such advertising. A copy of said consent and agreement shall be furnished to Seller.

All local advertising to be paid for out of the dealer portion of the Advertising Fund shall carry the name and address of Dealer except that if, in the judgment of Seller, that is impractical, a suitable group reference will be used.

Contributions to said Fund shall be accounted for separately. However, contributions to the Fund shall be credited to the Fund for the joint account of all dealers involved where two or more Chevrolet dealers are located in the same city or town or where one or more dealers are located in a community suburban to a large city and in the judgment of Seller advertising in said large city substantially covers such suburban community, or where two or more dealers are located within a group of communities which, in the judgment of Seller, may be considered as a common area for purposes of local advertising; contributions by all other dealers shall be credited to the Fund for the separate account of each dealer involved.

With respect to contributions of dealers located in cities, towns, or communities as aforesaid, which are credited to the Fund for the joint account of the dealers involved, the unspent portion, if any, of any such dealer's contribution, upon termination of this Agreement, shall remain in said joint account and shall be used in the pay-

ment of the cost of local advertising and not refunded to Dealer. With respect to contributions of all other dealers which are credited to the Fund for the separate account of each such dealer, the unspent portion, if any, of any such dealer's contribution, upon termination of such dealer's Selling Agreement, shall be refunded to such dealer.

As soon as practicable after the close of each calendar year during the term of this Agreement, or in the event of termination of this Agreement, as soon as practicable after the effective date of termination, Dealer shall be furnished with a statement of his account in dealer portion of said Fund or of the joint account to which he has contributed. Such statement shall show the total advertising expenditures by media classification charged against said account, the total collections and the resulting balance, and in the case of a joint account, the amount of the individual contribution of Dealer.

B. Factory portion of fund

Seller will pay into the advertising Fund the sum of Three Dollars and Seventy-five Cents ($3.75) for each new Chevrolet motor vehicle and chassis purchased and paid for by Dealer, and such sums will be credited to the factory portion of the Advertising Fund.

The factory portion of the Fund may be used by Seller for advertising of such type in such media and at such time and place as, in the opinion of Seller, will most effectively serve the dealer needs or interests as determined by Seller.

25. ASSOCIATE DEALERS

A. Appointment and termination

Dealer, with approval of and jointly with Seller, will enter into selling agreements with Associate Dealers for the sale of new Chevrolet motor vehicles, chassis, parts and accessories under the jurisdiction of Dealer at such places within the Dealer's territory as Dealer shall deem advisable or as Seller may require. All such agreements will be executed by Dealer and Seller on agreement forms to be supplied by Seller. The approval by Seller of the appointment of the Associate Dealer shall be obtained prior to the execution of the agreement by the Associate Dealer. Seller and Dealer will use due diligence in requiring such Associate Dealers to keep and perform the terms of such agreements. Seller, or Dealer with the consent of Seller, may terminate an agreement with an Associate Dealer upon such terms and conditions as may be specified in such agreement.

B. Failure to appoint

If Dealer fails or neglects to appoint Associate Dealers upon request of Seller within three (3) months after such request, Seller shall have the right to appoint Associate Dealers at the places designated.

C. Subrogation

If this Agreement is terminated, Seller, at its option, shall immediately be subrogated to all the rights of Dealer with Associate Dealers appointed hereunder with regard to the sale of new Chev-

rolet motor vehicles, chassis, parts and accessories. In furtherance thereof, Dealer will execute written assignments to Seller on request. In no event, however, will Seller be responsible for or Dealer be relieved from any previous obligations, acts or defaults of Dealer.

TERMINATION OF AGREEMENT

20. TERMINATION

A. Termination by dealer

Dealer may terminate this Agreement by written notice of termination delivered to Seller, such termination to be effective one (1) month after receipt by Seller of such notice.

B. Termination for cause

(1) If Seller or Dealer requires a license for the performance of any obligation hereunder or in connection herewith in any state or jurisdiction where this Agreement is to be performed, then and in such event if either of the parties hereto shall fail to secure or maintain a license or renewal thereof, or if such license shall be suspended or revoked, either party may immediately terminate this Agreement and all orders theretofore given to Seller and not delivered, by giving to the other party written notice of such termination.

(2) If Dealer does not develop the sale of Chevrolet motor vehicles and chassis to the satisfaction of Seller or does not conduct his business in accordance with any requirement set forth in Paragraphs 11 and 12, Paragraphs 14 to 19,

inclusive, or Paragraph 21 hereof, to the satisfaction of Seller, Seller may terminate this Agreement by giving to Dealer written notice of termination to be effective three (3) months after receipt thereof.

(3) Seller may terminate this Agreement immediately by delivering to Dealer or his representative written notice of such termination in the event of the happening of any of the following:

a. Death, incapacity, or the removal, resignation, withdrawal, or elimination from the dealership for any reason of Dealer or any person named in Paragraph Third of this Agreement.

b. Any sale, transfer, relinquishment, voluntary or involuntary, by operation of law or otherwise, of any substantial interest in the direct or indirect ownership or management of the Dealer or dealership.

c. Any dispute, disagreement, or controversy between or among principals, partners, managers, officers or stockholders of Dealer which, in the opinion of Seller, may adversely affect the ownership, operation, management, business or interest of Dealer, dealership, or Seller.

d. Insolvency of Dealer; the filing of a voluntary petition in bankruptcy by Dealer; the filing of a petition to have Dealer declared bankrupt, provided it is not vacated within thirty (30) days from the date of filing; the appointment of a receiver or trustee for Dealer, provided such appointment is not vacated within thirty (30) days from the date of such appointment; the execution by Dealer of an assignment for the benefit of creditors; the conviction of Dealer or any principal of-

ficer, or manager of Dealer of any crime which, in the opinion of Seller, may adversely affect the ownership, operation, management, business or interest of Dealer, dealership, or Seller.

(4) Seller or Dealer may terminate this Agreement immediately by delivering to the other party written notice of termination in the event that the other party violates or fails to comply with any term or provision of this Agreement for which termination is not otherwise specifically provided for in this Paragraph 28.

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GENERAL PROVISIONS

30. DEALER NOT MADE AGENT OR LEGAL REPRESENTATIVE OF SELLER

This Agreement of which these Terms and Conditions are a part does not constitute Dealer the agent or legal representative of Seller for any purpose whatsoever. Dealer is not granted any express or implied right or authority to assume or to create any obligation or responsibility in behalf of or in the name of Seller or to bind Seller in any manner or thing whatsoever.